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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,429	07/31/2001	Ian J. Sherlock	TI-30293	4195

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EXAMINER

KUMAR, PANKAJ

ART UNIT PAPER NUMBER

2631

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/919,429	<b>Applicant(s)</b> SHERLOCK, IAN J.	
	<b>Examiner</b> Pankaj Kumar	<b>Art Unit</b> 2631	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_  
 Claim(s) objected to: 2-7,9 and 11-15.  
 Claim(s) rejected: 1,8,10 and 16-21.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

  
**MOHAMMED GHAYOUR**  
**SUPERVISORY PATENT EXAMINER**

Art Unit: 2631

Applicant argues that McHale does not describe the structure of the DSL modem used in the modem pool. This is not persuasive since McHale teaches the structure with the various elements of the DSL modem such as the various DSL lines and the switching between the DSL lines etc.

Applicant claims to detect whether DSL service exists and argues on page 7 that “there is no need to verify whether DSL service exists” and then in the same sentence applicant states that “splitter 50 verifies the data service subscription”. Applicant’s arguments are contradictory. On the one hand applicant argues that the reference does not need to verify DSL service. On the other hand applicant argues that the reference verifies the DSL service e.g. “splitter 50 verifies the data service subscription” from page 7 of arguments and “McHale only references XDSL modems” from page 6 of the arguments. Office agrees with applicant’s latter position that McHale verifies data subscription service (DSL service). Verification of DSL service inherently requires detection of whether DSL service exists.

Applicant argues that McHale teaches away from verification of DSL service every time a request for service is detected. This is not persuasive since applicant has not claimed verification of DSL service every time a request for service is detected.

As to the combination of McHale and Liu applicant argues that McHale already knows the customers connected and thus there is no need to McHale to verify to detect any service on the data line. This is not persuasive. Although McHale tries to connect its customers, at least one redundant check to verify that their customers are connected will help to improve McHale’s system. For example, when two people or two computers are connected through a phone line, if both sides are not saying anything or if the connection was just initiated, then there would be silence even though the connection exists. One person may ask ‘are you there?’ in the case of two people connected to verify the connection exists or one computer may ping the other computer in the case of two computers connected to verify the connection exists.